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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,878	08/12/2002	Volker Gerstner	GK-ZEI-3,161/500343.20162	1430

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EXAMINER

BROWN, KHALED

ART UNIT PAPER NUMBER

2877

DATE MAILED: 08/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

10/089,878

Applicant(s)

GERSTNER ET AL.

Examiner

Khaled Brown

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the c rrespondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-71 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

The incorporation of essential material in the specification by reference to a foreign application or patent, or to a publication is improper (See p. 1-2, Substitute Spec). Applicant is required to amend the disclosure to include the material incorporated by reference. The amendment must be accompanied by an affidavit or declaration executed by the applicant, or a practitioner representing the applicant, stating that the amendatory material consists of the same material incorporated by reference in the referencing application. See *In re Hawkins*, 486 F.2d 569, 179 USPQ 157 (CCPA 1973); *In re Hawkins*, 486 F.2d 579, 179 USPQ 163 (CCPA 1973); and *In re Hawkins*, 486 F.2d 577, 179 USPQ 167 (CCPA 1973):

The disclosure is objected to because of the following informalities: There is no Summary of Invention Section. Additionally, the Background Section does not really describe the state of the art for which the invention pertains or the problems which the invention intends to overcome.

Appropriate correction is required.

The disclosure is objected to because of the following informalities: on page 6, line 2 of the substitute specification, reference is made to Fig 4b. However, there is no Fig 4b.

Appropriate correction is required.

As best the examiner is able to ascertain the meaning the following rejections are made:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 21-71 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite in that it fails to point out what is included or excluded by the claim language. This claim is an omnibus type claim. The claims depend on various equations referred to as "Equation 5b", "Equation 10", "Equation 11", etc...which are located in the specification and any change to the specification may automatically generate a change in the claims and thus the meets and bounds of the claims cannot be readily determined. Also claims 49,50,65 and 66 refer to the Drawings causing a similar problem.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-71 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wilson (WO 98/45745).

Re clms 21-71: Wilson discloses a method for increasing the depth of discrimination of optically imaging systems comprising the steps of: projecting a periodic structure in the object; detecting $N, N \geq 3$ structured images of the object with various phase angles $\phi = n$ multiplied by two pie divided by N , where $n = 0$ to N minus 1 of the projected structure and generating optical sections by evaluation of the images with the N different phase angles by various equations (Wilson p.3).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sussman 5878152, Sissom et al 5912768, Sussman 6025905, Halioua et al 4641972, Ben-Levy et al 5867604, Harding 6084712, Zeien 6471308, Zeien 5581352, Hallerman et al 6144453, Wallack 6219461, Hallerman et al 6262803, Wallack 6269197 and Huang et al 6438272.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khaled Brown whose telephone number is 703-306-5738. The examiner can normally be reached on M-F 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font can be reached on 703-308-4881. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.

KB
July 27, 2003



Frank Font
Supervisory Patent Examiner
Art Unit 2877